



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

NOV 22 2011

Colonel John R. Boulé II
District Engineer, New York District
U.S. Army Corps of Engineers
Jacob K. Javits Federal Building
New York, New York 10278-0090

Dear Colonel Boulé:

This is in regard to Public Notice number NAN-2011-01158-WCA dated October 14, 2011, concerning an application by Metro Central, LLC c/o Triple Five Development for a Department of the Army permit to construct a commercial amusement park and water park in the Borough of East Rutherford, Bergen County, New Jersey. Due to a lack of documentation concerning alternatives to the project, minimization of unavoidable impacts, and mitigation for the filling of waters of the United States, we must object to the proposed action at this time.

The applicant proposes to discharge fill material into approximately 5.47 acres of waters of the United States, including wetlands, to facilitate the construction of the two commercial parks. This property comprises 21.75 acres and includes approximately 7.36 acres of jurisdictional tidal and non-tidal Waters of the United States. In addition, work is proposed on an adjacent site for drainage improvements involving an existing 96-inch culvert beneath the New Jersey Turnpike. These facilities would adjoin an entertainment and retail complex formerly known as Xanadu that was authorized under Department of the Army Permit 2003-00549. Triple Five has an agreement to purchase the existing complex and rename it American Dream Meadowlands.

The proposed regulated activities include discharging approximately 50,000 cubic yards of fill into 2.44 acres of tidal wetlands and 2.8 acres of non-tidal wetlands to facilitate the construction of a 639,000 square foot building complex that would consist of a 318,000 square foot Amusement Park, and a 236,000 square foot Water Park. These indoor Parks would share a two-level common area containing various patron facilities on the lower level and a food court on the upper level. A perimeter road would be constructed around the building to allow maintenance and emergency vehicles access to the site. This perimeter road would connect to the East Peripheral Road. A proposed pedestrian bridge would cross the East Peripheral Road, connecting the common area to the adjacent entertainment and retail complex.

After evaluating the information available for this project, the U.S. Environmental Protection Agency (EPA) cannot concur that the project complies with the Clean Water Act Section 404(b)(1) Guidelines. These Guidelines state that "no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic environment." In the case of non-water dependent activities, such as the proposed entertainment parks, such alternatives "are presumed to be available, unless clearly demonstrated otherwise". The

Public Notice indicates that the applicant completed an alternatives analysis, including the no-build alternative, which evaluated construction alternatives and their associated impacts to the aquatic environment. The applicant's conclusion was that the preferred project, as designed, is the least damaging practicable alternative available to them. The Notice further indicates that the applicant "has avoided and minimized impacts to waters of the United States, including wetlands to the extent feasible through the following measures: stacking of common areas and integrating two buildings into one, alleviating vehicular parking at the project site by utilizing existing parking at the existing and adjacent entertainment and retail complex." EPA requests that these analyses be made available to us so that we may evaluate the adequacy of the alternatives analysis and verify that the 404(b)(1) guidelines have been satisfied.

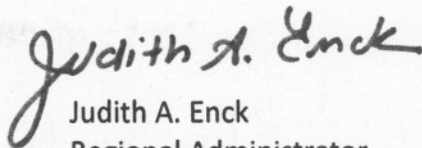
In addition, the Public Notice indicates that final compensatory mitigation program for the project will be performed within the same watershed and in a manner consistent with the 2008 Final Rule for Compensatory Mitigation for Losses of Aquatic Resources (40 CFR Part 230). However, 40 CFR 230.94(b)(1) states that the public notice must contain a description of the proposed mitigation plan for unavoidable impacts. The Public Notice issued for this project does not contain details about the nature, location, and scope of the mitigation plan. Therefore, at this time we cannot concur that sufficient mitigation will be put forth to compensate for unavoidable impacts.

As stated in the Notice, approximately 3,500 cubic yards of sediment will be dredged as part of overall drainage improvements to the site with dredged material disposed of at a suitable upland disposal site. Please note that it is a goal of the New Jersey/New York Harbor Dredged Material Management Plan to use all dredged material beneficially. If this project moves forward, the applicant should consider using the dredged material in a beneficial application either on-site or off-site.

In summary, we have insufficient documentation to conclude that the project complies with the Clean Water Act Section 404(b)(1) guidelines. It is also EPA's opinion that the Hackensack Meadowlands is an Aquatic Resource of National Importance as defined in Part IV, Paragraph 1, of the Clean Water Act Section 404(q) Memorandum of Agreement signed by our two agencies on August 11, 1992. Pursuant to Part IV, Paragraph 3(a), of the Memorandum of Agreement, we believe the proposed project may result in substantial and unacceptable impacts to this aquatic resource. EPA therefore objects to Department of the Army authorization for this project, as proposed. Pursuant to Part IV, Paragraph 3(b), of the Memorandum of Agreement, we will notify you further concerning EPA's opinion on this project within 25 calendar days after the end of the comment period of the Public Notice. To assist us in this review, I request that the Corps of Engineers provide EPA copies of any materials contained in the application that are relevant to the 404(b)(1) Guidelines.

If you have any questions regarding this matter, please contact me at (212) 637-5000, or have your staff contact Mr. Mario Del Vicario, Chief of EPA's Watershed Management Branch, at (212) 637-3779.

Sincerely,

A handwritten signature in dark ink, reading "Judith A. Enck". The signature is fluid and cursive, with the first name "Judith" being more prominent and the last name "Enck" following in a similar style.

Judith A. Enck
Regional Administrator

cc: U.S. Fish and Wildlife Service, Pleasantville, NJ
National Marine Fisheries Service, Sandy Hook, NJ
New Jersey Department of Environmental Protection, Trenton, NJ